

Message Text

PAGE 01 STATE 187599

12
ORIGIN L-03

INFO OCT-01 EA-06 ISO-00 OES-03 ERDA-05 SS-15 JUSE-00

SSO-00 NRC-05 CIAE-00 INR-07 NSAE-00 NSC-05 EB-07

COME-00 TRSE-00 /057 R

DRAFTED XY L/OES:RJBETTAUER:MJR
APPROVED BY L/OES:BHOXMAN
OES - MR. KRATZER (DRAFT)
ERDA - MR. BRUSH (DRAFT)
L/EA - MRS. VERVILLE (DRAFT)
L/SFP - MR. FIELDS (INFO)
L -MR. SANDLER (DRAFT) -
D- MR. DUEMLING (INFO)
JUSTYCE - MR. RISTAU (DRAFT)
EA/J - MR. SMITH (DRAFT)

JUSTICE/CIV.DIV.-MR. MCCARTHY (DRAFT)
S/S-O:J. HOGANSON

----- 124285

R 080303Z AUG 75
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO

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E.O. 11652: GDS
TAGS: NERG, JA
SUBJECT: ENRICHED URANIUM TAX
REF: TOKYO 9504

1. DEPT AND ERDA HAVE BEEN FOLLOWING CLOSELY URANIUM TAX
CASE. IN ADDITION TO INFORMAL CONTACTS DEPT HAD MEETING
WITH JAPANESE UTILITY AND EMBASSY REPS ON JUNE 27. ON
JULY 23 WE RECEIVED NOTE FROM JAPANESE EMBASSY, TEXT OF
WHICH IS CONTAINED PARA 6 BELOW. TEXT OF DEPT REPLY NOTE
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PAGE 02 STATE 187599

IS CONTAINED PARA 7 BELOW. JAPANESE NOTE REFERS TO ASSESS-
MENT OF \$3,901,920 TAX BY ROANE COUNTY. WE HAVE BEEN IN-
FORMED THAT CITY OF OAK RIDGE HAS ASSESSED ADDITIONAL TAX
OF APPROXIMATELY \$5 MILLION.
2. PROBLEM IS PARTICULARLY DIFFICULT. ON ONE HAND, WE

RECOGNIZE THAT

JAPANESE MADE ORIGINAL PURCHASE TO ASSIST

USG AND WE THEREFORE WISH TO DO ALL THAT IS POSSIBLE AND APPROPRIATE TO ASSIST THEM IN AVOIDING THIS SUBSTANTIAL AND UNANTICIPATED TAX. ON OTHER HAND, EXECUTIVE BRANCH IS NOT ABLE TO TELL LOCAL AUTHORITIES NOT TO SEEK TO COLLECT TAX IF IT IS FINALLY DETERMINED THAT THEY ARE LEGALLY ENTITLED TO COLLECT. TO HELP JAPANESE, WE MUST COME UP WITH LEGAL GROUND FOR RESISTING TAX. WE ARE CONTINUING URGENT EFFORTS WITHIN EXECUTIVE BRANCH TO FIND WAY TO ASSIST GOJ.

3. FYI: DEPT OF JUSTICE IS INVESTIGATING WHETHER THERE ARE ADEQUATE GROUNDS TO ASSERT THAT PROPERTY SHOULD NOT BE

TAXED EITHER BECAUSE OF FEDERAL GOVERNMENT INVOLVEMENT WITH PROPERTY OR BECAUSE FOR TAX PURPOSES (WHILE PERHAPS NOT FOR OTHER PURPOSES) THE PROPERTY IS STILL USG PROPERTY AND THUS IMMUNE FROM TAX. WE WOULD NOT WISH TO GET JAPANESE HOPES UP ON THIS POSSIBILITY UNTIL WE HAVE FURTHER ANALYSIS FROM JUSTICE.

4. FYI: WE WOULD LIKE TO CAUTION YOU NOT TO DISCUSS MERITS OR APPROPRIATENESS OF POTENTIAL SOVEREIGN IMMUNITY CLAIM WITH JAPANESE. END FYI.

5. EMBASSY MAY DISCUSS PROBLEM WITH JAPANESE ALONG LINES OF U.S. NOT (PARA 7) AND PARAS 1 AND 2 ABOVE AND REITERATE THAT WE WILL REMAIN IN CLOSE TOUCH WITH JAPANESE EMBASSY HERE.

6. TEXT OF JAPANESE NOTE: "THE EMBASSY OF JAPAN PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOR TO CONVEY THE FOLLOWING FINDINGS OF THE GOVERNMENT OF JAPAN CONCERNING THE TAXATION BY ROANE COUNTY, TENNESSEE ON THE ENRICHED URANIUM STORED IN THE ENERGY RESEARCH AND LIMITED OFFICIAL USE
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PAGE 03 STATE 187599

DEVELOPMENT ADMINISTRATION FACILITY, LOCATED IN THE SAME COUNTY, IN ACCORDANCE WITH CONTRACTS BETWEEN JAPANESE UTILITY COMPANIES AND ERDA, FORMERLY THE ATOMIC ENERGY COMMISSION. THE EMBASSY HAS THE FURTHER HONOR TO REQUEST THE DEPARTMENT TO MAKE KNOWN TO THE STATE OF TENNESSEE AND TO ROANE COUNTY THE FINDINGS OF THE GOVERNMENT OF JAPAN, AS WELL AS THE VIEWS OF THE GOVERNMENT OF THE UNITED STATES ON THIS MATTER.

"1. ON JULY 11, 1975, THE TRUSTEES OF ROANE COUNTY, TENNESSEE ORDERED TEN JAPANESE UTILITY COMPANIES TO PAY PROPERTY TAXES FOR THE YEAR 1974, INCLUDING A PENALTY, ON THE ABOVE-MENTIONED URANIUM, PAYMENTS TOTALLING \$3,901,920 DOLLARS.

"IN THIS CONNECTION, THE GOVERNMENT OF JAPAN WISHES TO DRAW THE ATTENTION OF THE GOVERNMENT OF THE UNITED STATES TO THE FACT THAT THE PROCUREMENT OF URANIUM ENRICHMENT SERVICES INVOLVING THE SAID URANIUM CONSTITUTED A PART OF THE SPECIAL PURCHASES FROM THE UNITED STATES, WHICH JAPAN MADE IN ACCORDANCE WITH STRONG UNITED STATES DESIRES. THESE PURCHASES RESULTED FROM THE MEETING OF DELEGATES FROM THE TWO GOVERNMENTS HELD AT HOKONE IN JULY 1972, AND FROM FURTHER DISCUSSIONS BY MR. TSURUMI, DEPUTY VICE MINISTER, AND AMBASSADOR INGERSOLL IN AUGUST 1972. AT THAT TIME, THE GOVERNMENT OF JAPAN, MOTIVATED SOLELY BY THE SPIRIT OF COOPERATION AND UNAWARE OF POSSIBLE COMPLICATIONS BY THE U.S. INTERNAL TAXATION SYSTEM, DID AGREE

TO MAKE SUCH PURCHASES WITH THE INTENT OF ALLEVIATING THE UNITED STATES BALANCE OF PAYMENTS DIFFICULTIES, AND THEREBY FURTHERING FRIENDLY RELATIONS BETWEEN THE TWO COUNTRIES.

"2. DURING THE COURSE OF THE URANIUM NEGOTIATIONS BETWEEN THE CONCERNED PARTIES, WHICH INCLUDED REPRESENTATIVES FROM BOTH GOVERNMENTS, IT WAS AGREED THAT JAPAN WOULD TENDER ADVANCE PAYMENT FOR URANIUM ENRICHMENT SERVICES. THIS ARRANGEMENT WAS BASED ON POLITICAL CONSIDERATIONS THAT JAPAN WOULD COOPERATE FOR THE EARLY IMPROVEMENT OF THE UNITED STATES BALANCE OF PAYMENTS.

"ALTHOUGH THE SUBSTANCE OF THE AGREEMENT INVOLVED LIMITED OFFICIAL USE
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PAGE 04 STATE 187599

ADVANCE PAYMENTS FOR ENRICHMENT SERVICES, FOR REASONS KNOWN TO BOTH PARTIES, THE FORMALITY OF THE CONTRACT WAS FRAMED AS A TRANSFER OF TITLE OF THE URANIUM COMPONENT. ON THE JAPANESE SIDE, THE JAPANESE EXPORT-IMPORT BANK COULD NOT EXTEND THE FINANCING FOR THE PAYMENT OF SERVICES. (THE JAPANESE EXIM BANK FINANCING WAS NECESSARY TO MAKE THE ADVANCE PAYMENT FEASIBLE FOR THE UTILITY COMPANIES.) ON THE AMERICAN SIDE, AS REPRESENTED BY THE AEC, UNITED STATES DOMESTIC REGULATIONS REQUIRED THE TRANSFER OF TITLE OF THE URANIUM COMPONENT IN EXCHANGE FOR RECEIVING ADVANCE PAYMENT FOR ENRICHMENT SERVICES.

"3. ALTHOUGH TECHNICAL REQUIREMENTS NECESSITATE THAT THE TITLE TO THE URANIUM, FOR THE SAKE OF FORMALITY, BELONGS TO THE JAPANESE UTILITY COMPANIES, THEY CAN NEITHER TAKE DELIVERY OF THE ENRICHED URANIUM NOR ARE THEY FREE TO DISPOSE OF THE URANIUM UNTIL THEY SUPPLY FEED MATERIAL TO ERDA.

"4. BASED ON THE ABOVE-MENTIONED FACTS, THE GOVERNMENT OF JAPAN CONSIDERS THE IMPOSITION OF PROPERTY TAXES ON THE SAID URANIUM TO BE UNDUE, AND THEREFORE, REQUESTS THE

GOVERNMENT OF THE UNITED STATES TO TAKE APPROPRIATE MEASURE IN ALLEVIATING THE SITUATION."

7. TEXT OF U.S. NOTE: "THE DEPARTMENT OF STATE ACKNOWLEDGES RECEIPT OF THE NOTE FROM THE EMBASSY OF JAPAN DATED JULY 23, 1975, CONCERNING THE TAXATION BY ROANE COUNTY, TENNESSEE, OF ENRICHED URANIUM BELONGING TO JAPAN UTILITIES AND STORED IN A FACILITY OF THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION LOCATED IN THAT COUNTY IN ACCORDANCE WITH CONTRACTS BETWEEN THE UTILITIES AND THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION.

"THE DEPARTMENT OF STATE SHARES THE CONCERN OF THE GOVERNMENT OF JAPAN ABOUT THE EFFORTS OF ROANE COUNTY LIMITED OFFICIAL USE

OFFICIALS TO IMPOSE A TAX ON THE ENRICHED URANIUM. IT IS RECOGNIZED THAT THE ARRANGEMENTS FOR STORAGE OF ENRICHED URANIUM IN ROANE COUNTY, TENNESSEE, RESULTED FROM DISCUSSIONS BETWEEN THE TWO GOVERNMENTS AND FROM ARRANGEMENTS REACHED WITH THE GOVERNMENT OF JAPAN RELATING TO THE UNITED STATES' BALANCE OF PAYMENTS. IT IS FOR THIS REASON THAT THE DEPARTMENT OF STATE, THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AND THE DEPARTMENT OF JUSTICE HAVE UNDERTAKEN A STUDY TO DETERMINE WHETHER LEGAL GROUNDS EXIST TO CHALLENGE THE TAX.

PAGE 05 STATE 187599

AS THE GOVERNMENT OF JAPAN IS AWARE, THE RIGHTS OF THE STATES AND THEIR AUTHORIZED SUBDIVISIONS TO IMPOSE TAXES ON PERSONS AND PROPERTY UNDER THEIR JURISDICTION, WHILE SUBJECT TO THE CONSTITUTION, TREATIES AND LAWS OF THE UNITED STATES ARE NOT SUBJECT TO DIRECT POLICY REVIEW BY THE EXECUTIVE DEPARTMENTS OF THE UNITED STATES GOVERNMENT. THE DEPARTMENT OF JUSTICE IS INVESTIGATING WHETHER THE FEDERAL GOVERNMENT HAS STANDING TO TAKE INDEPENDENT ACTION IN THE COURTS.

THE DEPARTMENT OF STATE OF COURSE IS NOT NOW IN A POSITION TO EXPRESS A VIEW AS TO WHETHER THE DOCTRINE OF SOVEREIGN IMMUNITY MAY HAVE ANY APPLICABILITY TO THIS PROBLEM. EVEN IN CASES WHERE THERE IS A POSSIBLE SOVEREIGN IMMUNITY CLAIM, THE DEPARTMENT OF STATE WOULD NOT TAKE ANY POSITION UNLESS THE FOREIGN GOVERNMENT CONCERNED PRESENTED A FORMAL DIPLOMATIC REQUEST THAT THE DEPARTMENT MAKE A SUGGESTION OF IMMUNITY TO THE COURT WHERE THE SOVEREIGN IMMUNITY CLAIM HAS BEEN MADE. AS A MATTER OF INFORMATION, THE DEPARTMENT NOTES THAT IT FOLLOWS THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY AS SET FORTH IN A LETTER FROM THE ACTING LEGAL ADVISER JACK B. TATE TO ACTING ATTORNEY GENERAL PHILIP B. PERLMAN DATED MAY 19, 1952, PUBLISHED IN 26 DEPARTMENT OF

STATE BULLETIN 984 (1952) AND REPUBLISHED IN 6 WHITEMAN,
DIGEST OF INTERNATIONAL LAW 569 (1968). A COPY OF THIS
LETTER IS ENCLOSED.

"THE DEPARTMENT OF STATE HAS EXPRESSED ITS CONCERN
ABOUT THE FOREIGN POLICY IMPLICATIONS OF THE IMPOSITION
OF THE TAX TO THE CITY MANAGER OF OAK RIDGE, TENNESSEE,
IN RESPONSE TO A LETTER FROM THAT OFFICIAL. A COPY OF
THE EXCHANGE OF CORRESPONDENCE IS ENCLOSED. THE DEPARTMENT
DESIRES TO REMAIN IN CLOSE TOUCH WITH THE EMBASSY OF JAPAN
ON THIS MATTER AND TO PROVIDE ALL FEASIBLE AND APPROPRIATE
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PAGE 06 STATE 187599

ASSISTANCE." (ENCLOSURES TO U.S. NOTE NOT TRANSMITTED.) KISSINGER

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<< END OF DOCUMENT >>

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